



COMMONWEALTH of VIRGINIA

Office of the Governor

Robert F. McDonnell
Governor

December 14, 2012

The Honorable Secretary Kathleen Sebelius
Secretary of Health and Human Services
The U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Sebelius:

I have long opposed the approach taken in the Patient Protection and Affordable Care Act (PPACA) for addressing America's health care challenges. The partisan, bureaucratic, and expensive federal mandates, rules, taxes and spending are not the way to improve access, reduce costs and facilitate innovation in America's first class medical care system.

Today, I write to express Virginia's ongoing concerns about both the state and federal ability to responsibly implement health benefits exchanges by January 1, 2014. Nearly two and half years after passage of the PPACA, and despite numerous requests for information, there remains a lack of details and certainty about the states' ability to receive the necessary flexibility, control and funding of their own exchanges. Only in the past two weeks did we begin to receive some answers via draft regulations and general guidance to our numerous prior written requests, leaving inadequate time to fully analyze the long-term implications of selecting a state based exchange. Therefore, consistent with your request for a decision by December 14, 2012, while grateful for the extra thirty days to consider the best approach for the Commonwealth, Virginia will not build and operate a state based health benefits exchange by January 1, 2014. Pursuant to the PPACA, we anticipate that the federal government will build, operate, and fund the required exchange, be it a federally facilitated or hybrid exchange. You have stated, and the law makes clear, that the choice of a state based, federal, or hybrid/partnership exchange are all equally valid in complying with the law.

We look forward to having the Administration work with Virginia and other states to find a way to ensure that when exchanges come on line, they can function as intended and limit wasteful construction and implementation expense. We understand some states have already spent up to a staggering \$100 million apiece in federal funds to build such exchanges, with millions more needed for operations.

Virginia, like many other states, cannot establish a health benefits exchange without the action of our legislature. They have acted responsibly in previous years and have given me the

authority I requested to plan and prepare for a potential future state health benefits exchange. However, lacking necessary information to make good decisions, many members of the legislature have been similarly inclined to defer to a federal exchange.

Guidance recently received from your office this week continues to affirm that states can continue to apply for state based exchange planning grants from now through October 2014, and that a partnership exchange can still be chosen by February 2013. Thus, if the federal government's exchange is inadequate, or more concrete information becomes available from your office suggesting the clear benefits of a state run exchange to our citizens, a later decision to revert to a state based exchange is permissible under the law.

We are hopeful for the opportunity of continued dialogue between your staff and mine in order to ensure that input is considered from governors and from participating health plans that choose to be qualified to participate in any form of health benefits or hybrid exchange. We do believe that controlling our own insurance market in Virginia is in the best interests of our citizens.

As I indicated previously, I also have significant concerns about the second major issue before the states pursuant to the PPACA, that is, the expansion of Medicaid. Virginia cannot consider such expansion, unless there is a dramatic reform of the program at the federal level, to include state flexibility and waivers, and state methods to address the significant growth in Medicaid spending in state budgets. The explosive growth in Medicaid in Virginia of 1600% in the past 30 years, combined with the federal government's unsustainable \$16 trillion debt, makes Medicaid expansion, without significant reform, irresponsible.

My primary point of contact for health benefits exchange and Medicaid reform discussions will be Dr. Bill Hazel, Secretary of Health and Human Resources. He and his staff have led the planning process among all stakeholders, including the Bureau of Insurance, and will continue to be the main point of contact until a formal health benefits exchange entity is established.

We remain willing to work with CCIIO and HHS to ensure decisions made on behalf of Virginians are responsible and cost effective.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert F. McDonnell". The signature is fluid and cursive, with the first name "Robert" being the most prominent.

Robert F. McDonnell

cc: The Honorable Marilyn Tavenner
Mr. Gary Cohen
State Legislators
Congressional Delegation